A LEGAL PRIMER FOR US ACTIVISTS ATTENDING PROTESTS IN CANADA

This is information, not legal advice. Brought to you by the Movement Defence Committee in Toronto (via the late great NYC People's Law Collective and Common Front Legal Committee)

Basics

1. The People v. Scott = R. v. Scott (R. = Regina, a.k.a the Queen)
2. District Attorney = Crown Attorney (commonly referred to as 'the Crown')
3. Criminal law is federal and uniform across Canada (set out in the Criminal Code mainly, also the Controlled Drugs and Substances Act and the Youth Criminal Justice Act), although courts are administered by the provinces and there may be differences in court procedures/names/customs in different provinces.
4. Felonies = indictable offences
5. Misdemeanors = summary conviction offences
6. Hybrid offences are charges on which the Crown has the discretion to 'elect' whether you are prosecuted by indictment or via summary conviction – until the Crown elects, the charge is deemed indictable (the majority of offences in the Criminal Code are hybrid offences)
7. The type of charge determines what level of court you are tried at and only the most serious of indictable offences get you the right to a jury trial.
8. There are also minor offences under provincial laws (Provincial Offences, i.e. traffic rules, by-laws) – some of these are quasi-criminal and are treated very similarly to summary offences (e.g. trespass)
9. The federal/national police force (FBI equivalent) in Canada is the Royal Canadian Mounted Police (RCMP) – there are also provincial and municipal police forces (also Native police forces on reserves)
10. The CIA equivalent is CSIS (Canadian Security and Intelligence Service)

Constitutional Rights

1. The Canadian Charter of Rights and Freedoms is like the US Bill of Rights, give or take (i.e. Canadians have no right to bear arms, or even arm bears) – the most important rights are the same (freedom of speech, religion, association and peaceful assembly; the right against unreasonable search and seizure; the right not to be arbitrarily detained or imprisoned; the right to counsel (a lawyer); the presumption of innocence; the right to silence, etc.), although their interpretations may be different
2. If you do establish a violation of your constitutional rights at trial, the remedy may not be as clear cut as in US law. There is no automatic exclusion of improperly obtained evidence, for example.
3. Non citizens/residents of Canada have all the constitutional rights which relate to legal rights of the accused and fundamental freedoms (expression etc.), simply by virtue of being physically present in Canada.
4. As part of fair trial rights, an accused has the right to 'disclosure' of the Crown's case against her – you should get anything relevant that is in the Crown's possession. Do not refer to this as 'discovery' – that word is used in the civil law context to refer to depositions – in criminal law, it is disclosure.

Bail

1. Cash deposit bail requirements are not that common in Canada; much more common is having a 'surety': a person who knows the accused and the circumstances of the charge and who takes responsibility for ensuring that the accused shows up at trial. Generally the surety is asked to show assets (i.e. real estate, monetary assets) of a certain value, although the amount pledged is only seized if the accused person violates

their bail conditions and the Crown can prove at a hearing that the surety failed to live up to their obligations. Note that the surety takes on a personal obligation – an organization cannot be a surety, with very limited exceptions (e.g. there are bail programs for homeless defendants in some larger cities).
2. There are no bail bondsmen in Canada, and the provision of such services is actually illegal.
3. You are required to have a bail hearing within 24 hours or 'as soon as practicable' of being detained. In Ontario, this is usually in front of a justice of a peace, not a judge. Unless it's a very serious offence or you already out on bail, the presumption is for bail being granted without conditions – the Crown has
to 'show cause' why you should be detained or that release conditions are necessary (this is why bail hearings are sometimes called 'show cause hearings'). But note that the Crown can ask for conditions of release, a surety and/or cash bail simply on the basis that an accused lives outside the province or more than 200 km away from the place where they are in custody.
4. It is also quite common to be released from the police station (in ordinary circumstances), if you have identified yourself, have no other outstanding charges, have no criminal record (or a very limited and/or old one) and the cops feel you will show up for trial. You will most likely be asked to sign conditions for release and you should not do so without getting legal advice. Release conditions can be varied in court after release, but this procedure can be complicated and may take some time.
5. A summary citation = 'a promise to appear.' You are released from custody, but sign an agreement to show up for your first court date. For provincial offences, the initial document is a ticket.

Cops/Arrest
1. You have basically the same rights that you do in the US – they look great on paper, but the cops still have guns.
2. Upon arrest, the cops are supposed to tell you three main things: the reason for your arrest, that you have the right to counsel (including being told of the availability of free legal aid 'duty counsel' lawyers (and their phone number)) and/or the opportunity to contact your lawyer of choice in private), and that you
have the right to remain silent
3. You do not have to carry ID in Canada, citizen or not. Exceptions include motor vehicle drivers (not passengers), and those present in places where minors are not allowed (i.e. Bars, restricted movies), who can be asked to prove your age. For minor offences for which tickets are issued (i.e. by-law infractions), the police can arrest if you if they are not satisfied as to your identity.

Lawyers
1. In Canada, only lawyers (members of the bar) can do trials for indictable offences. Others (i.e. paralegals, law students), can do summary conviction trials and guilty pleas.
2. Because of the hybrid offence issue discussed above in Basics, you almost always need a lawyer to do a bail hearing as the Crown almost never elects prior to the bail hearing and the charges are therefore deemed indictable (unless you are
charged with a summary offence).
3. There are no public defenders in most provinces. In Ontario, there are 'duty counsel' lawyers provided by Legal Aid who can give advice, do bail hearings, guilty pleas and remands, but they cannot do trials. Legal Aid also funds clinics (most of which do not do criminal law) and gives certificates to accused people who cannot afford a lawyer, according to their criteria (which generally include being a residence of the province in question).

Sentencing
1. Under Canadian law, there are minimum sentences only for very serious offences; otherwise judges have wide discretion to order anything from discharges, probation, conditional sentences (i.e. served in the community), fines and community service, to jail.

2. It is harder to transfer a young person to an adult court in Canada – only 14-17 year olds can be and only for serious offences.
3. There is no death penalty in Canada.

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